IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.629 OF 2005

Shri Namdeo Dnyanu Chougule ..Appellant

Versus

Shri Shankar Krishna Chougule & Ors. ..Respondents

Shri N.v.Bandiwadekar for appellant

Mr.Amit B.Borkar for respondent no.1

CORAM : P.V.KAKADE, J.

DATE : 7TH JULY, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by 5th Adhoc Addl. District Judge, Kolhapur dated 2.4.2005 allowing the appeal and setting aside the judgment and order of decree passed by Civil Judge, Senior Division, Kolhapur dated 7.11.1995 whereby the suit was partly decreed and the defendants were permanently restrained from obstructing possession of the plaintiff over the suit land, however, claim for declaration was rejected.

2. I heard the learned counsel for both the parties. Perused the record as well as relevant documents made available by both the parties.

3. The suit land bearing Gat No.873 admeasuring 34.28 R of village Khebawade is owned by Maruti Dev Trust managed by the Maharashtra Western Devasthan Management Committee, Kolhapur, under the provisions of Bombay Public Trust Act. The suit land originally had been leased out to his adoptive father deceased Dnyanu Hari Chougule by the Collector for cultivation. He died on 19.8.1970. On his demise the suit land was leased out to his wife Parvatibai, who adopted the plaintiff by registered adoption deed. She died on 23.11.1985. During her life time, her husband’s brother Shripati had managed to enter his name to the 7/12 Extract of the suit land in collusion with Talathi in the year 1979-80. The Tahsildar had set aside entry of his name. The said Shripati and deceased Parvatibai had preferred Appeal Nos.153/1981 and 62/1980 before S.D.O. Both the appeals were heard jointly. The appeal preferred by Shripati was dismissed and appeal preferred by Parvatibai was allowed. Shripati had preferred Second Appeal before

the Collector. In that appeal the matter was remanded to Tahsildar to hold inquiry about the adoptive son of deceased Dnyanu. Tahsildar on holding inquiry, reported to the Collector that Respondent No.1 is the adoptive son of deceased Dnyanu and Parvatibai and the suit land continued to be in possession of the plaintiff from his adoptive father. It is further alleged that however during the pendency of Appeal bearing R.T.S. No.39 of 1984, the respondent nos.2, 3 and 4 attempted to lease out the land in favour of Appellant without having any right and in contravention of provisions of law. It is the case of the plaintiff that respondent with the assistance of his power of attorney holder is cultivating suit land and Parvatibai was a tenant of the suit land. It was the case sought to be made out that the defendant nos.2, 3 and 4 managed to enter their names in 7/12 extract having their personal cultivation from the year 1991-92 illegally. According to the plaintiff, the appellant and respondent nos.2 to 5 were attempting to evict him from lawful possession of the suit land and hence claimed for declaration that as an adoptive son, he has inherited tenancy right and is tenant of respondent nos.2 and 3 and for perpetual injunction against the appellant. As the record shows

that respondent nos.2 and 3 and appellant did not file their written statement and suit proceeded against them without having written statement on record. On the basis of evidence of power of attorney and documents produced on record, the learned trial judge passed the decree to the extent of relief of perpetual injunction, but refused to order in respect of declaration. Appeal was carried to the District Court. However, the original appeal was remanded to the trial court with direction to lead further evidence and to allow the appellant to file his written statement. Appeal from Order was filed against that order in this Court, which was decided on 23.1.2004 wherein the appellate court order was quashed and set aside with direction to decide the appeal on merits on the basis of evidence, which was already adduced. The application made by the appellant to accept his written statement was rejected in view of the order passed by the High Court in A.O.No.796 of 2001.

4. On the background of this factual matrix it is seen that the lower appellate court judge adjudicated the dispute on merits and came to the conclusion that the respondent no.1 did not succeed in establishing that

he was in possession of the suit land as a tenant and adoptive son of deceased Parvatibai and Dnyanu. It was further held that the present appellant had failed to prove his settled possession over the suit property. It was also held that the suit was bad for non joinder of necessary party and as such the order passed by the trial court came to be set aside and appeal was allowed dismissing the suit. Hence the present appeal.

5. At the outset it may be noted that there is no substantial question of law involved in this appeal. The plaintiff came with the case that he was a tenant in the suit property by virtue of his alleged adoption by Parvatibai. It was also contended that he was in settled possession in the suit property and therefore, no order in respect of perpetual injunction could be issued against him. In support of this version my attention was brought to the document of 7/12 Extract showing the name of Namdeo Dnyanu Chougule i.e. the appellant in the column of "actual cultivator" of the property in the year 1994-95. Moreover, the learned counsel for the appellant also referred to the order passed on 26.8.1994 in RTS No.39 of 1984 passed by Addl. Collector, Kolhapur wherein it is stated that on inquiry

by Tahsildar it was found that the appellant was adoptive son of Parvatibai and her legal heir. However, it is to be noted that mere discussing of the RTS appeal with reference to the Tahsildar's inquiry and findings could not be sufficient in order to establish the right of tenancy in favour of the appellant only on the ground that he was alleged to be adoptive son of Parvatibai. The learned appellate court judge has discussed all the pros and cons involved in this issue properly and has come to the conclusion that the appellant failed to establish that he was in possession of the suit property in his capacity as a tenant by virtue of his alleged status of adoptive son of deceased Parvatibai. The relevant issue is pure issue of fact, which is correctly determined by the lower appellate court and therefore, there would not be any intervention in that regard.

6. Similarly it is held that all the trustees were necessary parties. Time and again this court has held that in a suit filed against any Trust registered under the Bombay Public Trust Act, all the trustees are necessary parties and therefore, they are required to be joined as party to the suit. In this regard reference was made to the ruling of the Apex Court in the case of

Shriram Mandir Sansthan @ Shri Ram Sansthan Pusda vs. Vatsalabai and Ors. reported in **1991 (1) MH.L.J. 321** wherein the court was dealing with the provisions of Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. With reference to Section 54 and 129(b) it was held that in cases where the land of trust or educational institution covered by Section 129(b), is invlved the tenancy of such lands is not heritable. Considering all these aspects I have no doubt whatsoever that the learned lower appellate court judge has rightly held that the suit was bad for non joinder of necessary parties.

7. So far as the question of alleged settled possession was concerned, the learned lower appellate court judge has also rightly held that it was not established that the plaintiff was in lawful settled possession. In this regard it must be noted that once the property was vested in trust, the Trust Management has every authority to lease out its property for beneficial use of the trust. The power of attorney examined by the appellant had not disclosed that which crops were cultivated in the year of institution of suit and on such basis it was held that the findings recorded

by Revenue authorities about the heirship of the respondent no.1 was not sufficient to establish that respondent no.1 was in possession of the suit land. No doubt that in the year 1994-95 name of the present appellant was shown in column of "actual cultivator" in 7/12 registered extract. However, in my considered view that would not be a conclusive evidence to show the lawful possession of the appellant on the suit property in absence of any sufficient evidence.

8. It is to be noted that time and again the Apex Court has laid down that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is seen from the record that the lower appellate court has properly appreciated the evidence and has arrived at conclusion that the suit deserves to be dismissed and hence the appeal was allowed. In my view the, reasoning adopted and findings recorded by the lower appellate court appears to be just, legal and proper and therefore, it would brook no interference. In the result the appeal stands dismissed.

. Consequently Civil Application No.1099 of 2005 also stands dismissed.